

GREENBERG TRAURIG
2375 EAST CAMELBACK ROAD, SUITE 700
PHOENIX, ARIZONA 85016
(602) 445-8000

Jon T. Neumann, SBN 018858
neumannj@gtlaw.com
GREENBERG TRAURIG, LLP
2375 E. Camelback Road, Suite 700
Phoenix, AZ 85016
(602) 445-8000

Peter J. Kocoras (*pro hac vice* application forthcoming)
Peter.Kocoras@ThompsonHine.com
THOMPSON HINE LLP
20 North Clark Street, Suite 3200
Chicago, Illinois 60602-5093
Telephone: (312) 998-4241
Fax: (312) 998-4245

Brian K. Steinwascher (*pro hac vice* application forthcoming)
Brian.Steinwascher@ThompsonHine.com
THOMPSON HINE LLP
335 Madison Avenue, 12th Floor
New York, New York 10017-4611
Telephone: (212) 908-3916
Fax: (212) 344-6101

*Attorneys for Plaintiffs Caremark PHC, LLC; CaremarkPCS
Health, LLC; Caremark, LLC; Caremark Rx, LLC;
Aetna, Inc.; and Aetna Health, Inc.*

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Caremark, LLC; Caremark PHC, LLC;
CaremarkPCS Health, LLC; Caremark Rx,
LLC; Aetna, Inc.; and Aetna Health, Inc.,

Petitioners,

v.

The Choctaw Nation; the Choctaw Nation
Health Services Authority; the Choctaw
Health Care, Talihina, OK; the Choctaw
Nation Health Clinic-Rubin White, Poteau;
the Choctaw Nation Health Clinic-McAlester;
the Choctaw Nation Health Clinic-Idabel; the
Choctaw Nation Health Clinic-Stigler; the
Choctaw Nation Health Clinic-Hugo; the
Choctaw Nation Health Clinic-Atoka; the
Choctaw Nation Heath Care Center Durant
Pharmacy; and the Choctaw Nation Online
Pharmacy Refill Center,

Respondents.

Case No.

**PETITION FOR ORDER TO COMPEL
ARBITRATION**

Petitioners Caremark, LLC, Caremark PHC, LLC, CaremarkPCS Health, LLC, Caremark Rx, LLC, Aetna, Inc. and Aetna Health, Inc. (collectively, “Petitioners”), hereby petition the Court to compel Respondents to submit their dispute to an arbitrator under the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.* (the “FAA”), and in accordance with certain governing agreements. In support, Petitioners submit the following:

INTRODUCTION

1. Respondent the Choctaw Nation (the “Nation”) owns and operates certain pharmacies, directly or through Respondent the Choctaw Nation Health Services Authority (“CNHSA”), which is, upon information and belief, a department, division, or agency of the Nation. As relevant here, the Nation’s pharmacies include (1) the Choctaw Nation Health Care, Talihina, Oklahoma; (2) the Choctaw Nation Health Clinic – Rubin White, Poteau, Poteau, Oklahoma; (3) the Choctaw Nation Health Clinic – McAlester, McAlester, Oklahoma; (4) the Choctaw Nation Health Clinic – Idabel, Idabel, Oklahoma; (5) the Choctaw Nation Health Clinic – Stigler, Stigler, Oklahoma; (6) the Choctaw Nation Health Clinic – Hugo, Hugo, Oklahoma; (7) the Choctaw Nation Health Clinic – Atoka, Atoka, Oklahoma; (8) the Choctaw Nation Health Center Durant Pharmacy, Durant, Oklahoma; and (9) the Choctaw Nation Online Pharmacy Refill Center (collectively with the Nation and CNHSA, “Respondents”).

2. The Nation’s pharmacies participate in multiple pharmacy networks operated by Petitioner Caremark, LLC (“Caremark”). Respondents entered into contracts with Caremark, referred to as a “Provider Agreement.”

3. In the Provider Agreement, Respondents expressly agreed that all disputes

1 “in connection with, arising out of or relating in any way to” the Provider Agreement
2 “will be exclusively settled by arbitration before an arbitrator in accordance with the rules
3 of the American Arbitration Association.” Respondents likewise agreed to hold any
4 arbitration in Scottsdale, Arizona.

5
6 4. In the Provider Agreement, Respondents expressly agreed: “The
7 arbitrator(s) shall have exclusive authority to resolve any dispute relating to the
8 interpretation, applicability, enforceability or formation of the agreement to arbitrate,
9 including but not limited to, any claim that all or part of the agreement to arbitrate is void
10 or voidable for any reason.”
11

12 5. Respondents have ignored their obligation to submit their dispute to an
13 arbitrator in Arizona in the first instance. Instead, the Nation has sued Petitioners in
14 federal district court in Oklahoma, despite the fact that the Provider Agreement requires
15 an arbitrator, and not a court, to decide questions of arbitrability of disputes between the
16 parties, and despite the fact that claims in the dispute are in connection with, arise out of,
17 and/or relate to the Provider Agreement.
18

19 6. The Nation has refused to proceed with arbitration, notwithstanding
20 Petitioners’ formal request to do so.
21

22 7. Having received the economic benefits of the Provider Agreement for
23 years, Respondents cannot now repudiate their obligations under the same agreement.

24 8. Petitioners now respectfully petition the Court for an Order, pursuant to
25 section 4 of the FAA, 9 U.S.C. § 4, to compel Respondents to submit the arbitrability of
26 their dispute with Petitioners to an arbitrator in the first instance.
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BACKGROUND

1
2 9. Among other aspects of their business, Caremark offers pharmacy benefit
3 management (“PBM”) services to insurers, third-party administrators and employer
4 sponsors of group health plans. The array of services of Caremark and their affiliates
5 offer PBM clients includes the administration and maintenance of pharmacy provider
6 networks. The pharmacy providers included in such networks agree by contract to fill
7 prescriptions for participants in Caremark’s plans at contractual prices.
8

9 10. Each of the Nation’s pharmacies is an Indian Health Service/Tribal/Urban
10 Indian Health Pharmacy (“ITU Pharmacy”) operated by the Nation, which is an Indian
11 tribe or tribal organization as defined under 25 U.S.C. § 1603.
12

13 11. Pursuant to the Provider Agreement, the Nation’s pharmacies, through their
14 ownership and operation by the Nation and the CNHSA, are participants in multiple
15 pharmacy networks administered by Caremark.
16

JURISDICTION AND VENUE

17
18 12. This Court has subject matter jurisdiction over the claims raised herein
19 pursuant to 28 U.S.C. § 1331. The dispute underlying this Petition, i.e., the claims in the
20 Complaint, defined and described *infra*, arises under the laws of the United States.
21 Specifically, Petitioners seek to compel arbitration of the Nation’s claims that Petitioners
22 allegedly violated the Indian Health Care Improvement Act, 25 U.S.C. § 1621e.
23

24 13. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391. The
25 FAA permits a party aggrieved by the failure, neglect, or refusal of another to arbitrate
26 under a written agreement for arbitration to petition a United States District Court for an
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1 order directing that such arbitration proceed in the manner provided in such agreement.
2 The Arbitration Provision requires any arbitration to take place in Scottsdale, Arizona,
3 within this Court's jurisdiction.

4 **PARTIES**

5
6 14. Petitioner Caremark, LLC is a California limited liability company with its
7 headquarters at 2211 Sanders Road, Northbrook, Illinois 60062.

8 15. Petitioner Caremark PHC, LLC is a Delaware limited liability company
9 with its headquarters at One CVS Drive, Woonsocket, Rhode Island 02895.

10 16. Petitioner CaremarkPCS Health, LLC is a Delaware limited liability
11 company with its headquarters at 750 West John Carpenter Freeway, Irving, Texas
12 75039. CaremarkPCS Health, LLC was formerly known as AdvancePCS Health, L.P.
13 ("AdvancePCS").
14

15 17. Petitioner Caremark Rx, LLC is a Delaware limited liability company with
16 its headquarters at One CVS Drive, Woonsocket, Rhode Island 02895.

17 18. Petitioner Aetna, Inc. is a Pennsylvania corporation with its headquarters
18 at 151 Farmington Avenue, Hartford, Connecticut 06156.

19 19. Petitioner Aetna Health, Inc. is a Pennsylvania corporation with its
20 headquarters at 1425 Union Meeting Road, Blue Bell, Pennsylvania 19422.

21 20. Respondent the Choctaw Nation is a federally recognized Native American
22 tribal nation headquartered at 1802 Chukka Hina, Durant, Oklahoma 74701. The Nation
23 operates a healthcare system, upon information and belief directly or through Respondent
24 CNHSA; the healthcare system includes the Respondent pharmacies, which provide
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1 pharmacy services including dispensing prescription medications to members of the
2 Nation.

3 21. Respondent CNHSA is, on information and belief, a division, department
4 and/or an agency of the Nation.

5 22. Each of the Respondent pharmacies is owned and operated by the Nation
6 and/or CNHSA:

7
8 (a) Respondent the Choctaw Nation Health Care Center, Talihina,
9 Oklahoma, is an ITU Pharmacy operated by an Indian tribe or tribal organization
10 as defined under 25 U.S.C. § 1603 (namely, the Nation and CNHSA), located at
11 One Choctaw Way, Talihina, Oklahoma 74571.

12
13 (b) Respondent the Choctaw Nation Health Clinic – Rubin White, Poteau,
14 Poteau, Oklahoma, is an ITU Pharmacy operated by an Indian tribe or tribal
15 organization as defined under 25 U.S.C. § 1603 (namely, the Nation and CNHSA),
16 located at 109 Kerr Avenue, Poteau, Oklahoma 74953. This pharmacy has the
17 same NCPDP number and the same business address as Respondent the Choctaw
18 Nation Online Pharmacy Refill Center, which shows that they are the same
19 pharmacy.
20

21
22 (c) Respondent the Choctaw Nation Health Clinic – McAlester,
23 McAlester, Oklahoma, is an ITU Pharmacy operated by an Indian tribe or tribal
24 organization as defined under 25 U.S.C. § 1603 (namely, the Nation and CNHSA),
25 located at 1127 South George Nigh Expressway, McAlester, Oklahoma 74501.

26
27 (d) Respondent the Choctaw Nation Health Clinic – Idabel, Idabel,
28

1 Oklahoma, is an ITU Pharmacy operated by an Indian tribe or tribal organization
2 as defined under 25 U.S.C. § 1603 (namely, the Nation and CNHSA), located at
3 902 East Lincoln, Idabel, Oklahoma 74745.

4 (e) Respondent the Choctaw Nation Health Clinic – Stigler, Stigler,
5 Oklahoma, is an ITU Pharmacy operated by an Indian tribe or tribal organization
6 as defined under 25 U.S.C. § 1603 (namely, the Nation and CNHSA), located at
7 2204 East Main, Stigler, Oklahoma 74462.
8

9 (f) Respondent the Choctaw Nation Health Clinic – Hugo, Hugo,
10 Oklahoma, is an ITU Pharmacy operated by an Indian tribe or tribal organization
11 as defined under 25 U.S.C. § 1603 (namely, the Nation and CNHSA), located at
12 410 North M Street, Hugo, Oklahoma 74743.
13

14 (g) Respondent the Choctaw Nation Health Clinic – Atoka, Atoka,
15 Oklahoma, is an ITU Pharmacy operated by an Indian tribe or tribal organization
16 as defined under 25 U.S.C. § 1603 (namely, the Nation and CNHSA), located at
17 1585 West Liberty Road, Atoka, Oklahoma 74525.
18

19 (h) Respondent the Choctaw Nation Health Center Durant Pharmacy,
20 Durant, Oklahoma, is an ITU Pharmacy operated by an Indian tribe or tribal
21 organization as defined under 25 U.S.C. § 1603 (namely, the Nation and CNHSA),
22 located at 1801 Chukka Hina, Durant, Oklahoma 74701.
23

24 **STATEMENT OF FACTS**

25 23. Each of the Nation's pharmacies has a current contract, known as a
26 Provider Agreement, with Caremark and CaremarkPCS (collectively referred to *infra* as
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28

1 “Caremark” unless otherwise indicated). Each Provider Agreement expressly
2 incorporates the terms of a Provider Manual.

3 24. The following describes the manner in which each Pharmacy came to be
4 bound by a current Provider Agreement:

- 5 a. Respondent the Choctaw Nation Health Care Center, Talihina,
6 Oklahoma signed a Provider Agreement with Caremark Inc. (now
7 known as Caremark, LLC) and CaremarkPCS in August 2005.
- 8 b. Respondent the Choctaw Nation Health Clinic – Rubin White, Poteau
9 signed a Provider Agreement with Caremark Inc. (now known as
10 Caremark, LLC) and CaremarkPCS in August 2005.
- 11 c. Respondent the Choctaw Nation Health Clinic – McAlester signed a
12 Provider Agreement with Caremark Inc. (now known as Caremark,
13 LLC) and CaremarkPCS in August 2005.
- 14 d. Respondent the Choctaw Nation Health Clinic – Idabel signed a
15 Provider Agreement with Caremark Inc. (now known as Caremark,
16 LLC) and CaremarkPCS in August 2005.
- 17 e. Respondent the Choctaw Nation Health Clinic – Stigler signed a
18 Provider Agreement with Caremark Inc. (now known as Caremark,
19 LLC) and CaremarkPCS in August 2005.
- 20 f. Respondent the Choctaw Nation Health Clinic – Hugo signed a
21 Provider Agreement with Caremark Inc. (now known as Caremark,
22 LLC) and CaremarkPCS in August 2005.
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PHOENIX, ARIZONA 85016
(602) 445-8000

1 g. Respondent the Choctaw Nation Health Clinic – Atoka signed a
2 Provider Agreement with Caremark Inc. (now known as Caremark,
3 LLC) and CaremarkPCS in December 2008.
4
5 h. Additionally, in October 2009, the Choctaw Nation Health Care,
6 Talihina, Oklahoma; the Choctaw Nation Health Clinic – Rubin White,
7 Poteau; the Choctaw Nation Health Clinic – McAlester; the Choctaw
8 Nation Health Clinic – Idabel; the Choctaw Nation Health Clinic –
9 Stigler; the Choctaw Nation Health Clinic – Hugo; the Choctaw Nation
10 Health Clinic – Atoka; and the Choctaw Nation Health Center Durant
11 Pharmacy signed a single Provider Agreement with Caremark, LLC
12 and CaremarkPCS. This 2010 provider agreement, referred to as a
13 “chain agreement,” replaced the Provider Agreements referenced in
14 Paragraphs 24(a) through 24(g) above, with the exception of the
15 Choctaw Nation Health Center Durant Pharmacy, which had not
16 previously signed a Provider Agreement.
17
18

19 25. All Provider Agreements signed by the Choctaw Nation pharmacies state
20 that “This Agreement, the Provider Manual, and all other Caremark Documents
21 constitute the entire agreement between Provider and Caremark, all of which are
22 incorporated by this reference as if fully set forth herein and referred to collectively as
23 the ‘Provider Agreement’ or ‘Agreement.’”
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1 26. Copies of the Provider Manual have been sent via UPS or FedEx to the
2 Nation's pharmacies, including most recently in 2020, when each of the Nation's
3 pharmacies received the new version of the Provider Manual.

4 27. The Provider Manual governs all aspects of a pharmacy's relationship with
5 Caremark, including the process for submitting pharmacy claims, and thus any pharmacy
6 participating in a Caremark network would necessarily need to review and understand
7 the Provider Manual at the time it entered into a Provider Agreement, and each time it
8 was updated, in order to submit claims to Caremark for reimbursement.
9

10 28. The 2020 Provider Manual is currently in effect, applicable to, and binding
11 on any pharmacy that has a Provider Agreement with Caremark and participates in the
12 Caremark network, including the Choctaw Nation pharmacies, and the Arbitration
13 Provision in the 2020 Provider Manual applies to this dispute.
14

15 29. Since entering into the Provider Agreement, and after receipt of each
16 version of the Provide Manual including the 2020 version, Respondents have submitted
17 claims for reimbursement pursuant to those agreements' terms. The Nation has never
18 disclaimed that its relationship with Caremark is governed by the Provider Agreement.
19

20 30. In particular, after receipt of the 2020 version of the Provider Manual,
21 Respondents continued to submit pharmacy claims to Caremark for reimbursement. This
22 means, pursuant to the terms of the Provider Manual, that Respondents agreed to and
23 accepted the terms of the 2020 Provider Manual.
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1 31. Each of the Choctaw Nation pharmacies has, on various dates, executed
2 Network Enrollment Forms with Caremark, pursuant to which the Choctaw Nation
3 pharmacy enrolled as a participant in specific networks administered by Caremark.

4 32. The Provider Agreement, Provider Manual, and Network Enrollment
5 Forms memorialize the contractual relationship Respondents have with Caremark,
6 including by establishing the amounts paid for pharmacy claims to Respondents and the
7 networks in which they participate. The Provider Agreement and incorporated Provider
8 Manual are referred to collectively as the “Provider Agreement” unless otherwise
9 indicated.
10

11 33. The Provider Agreement, Provider Manual, and Network Enrollment
12 Forms contains nonpublic information and proprietary business, technical and financial
13 information that is highly confidential. The disclosure of these documents would
14 negatively affect current and future business dealings and cause serious commercial
15 injury to Petitioners.
16

17 34. The Provider Agreement provides that Arizona law governs the Provider
18 Agreement.
19

20 35. As relevant here, the current Provider Manual, incorporated into the
21 Provider Agreement, provides in relevant part with respect to arbitration (the “Arbitration
22 Provision”) (emphasis added):
23

24 Any and all disputes between Provider and Caremark *[including*
25 *Caremark’s current, future, or former employees, parents, subsidiaries,*
26 *affiliates, agents and assigns (collectively referred to in this Arbitration*
27 *section as “Caremark”)]*, including but not limited to, disputes in
28 connection with, arising out of, or relating in any way to, the Provider
Agreement *or to Provider’s participation in one or more Caremark*

GRENNBERG TRAUERIG
2375 EAST CAMELBACK ROAD, SUITE 700
PHOENIX, ARIZONA 85016
(602) 445-8000

networks or exclusion from any Caremark networks, will be exclusively settled by arbitration. This arbitration provision applies to any dispute arising from events that occurred before, on or after the effective date of this Provider Manual. Any dispute otherwise arbitrable hereunder shall be deemed waived, and no such dispute shall be made or raised, unless a Dispute Notice has been given to Caremark, or arbitration filed, as provided below. Unless otherwise agreed to in writing by the parties, the arbitration shall be administered by the American Arbitration Association (“AAA”) pursuant to the then applicable AAA Commercial Arbitration Rules and Mediation Procedures including the rule governing Emergency Measures of Protection (available from the AAA). In no event may the arbitrator(s) award indirect, consequential, or special damages of any nature (even if informed of their possibility), lost profits or savings, punitive damages, injury to reputation, or loss of customers or business, except as required by Law.

The arbitrator(s) shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability or formation of the agreement to arbitrate, including but not limited to, any claim that all or part of the agreement to arbitrate is void or voidable for any reason.

In the event the arbitrator(s) determine that any provision of this agreement to arbitrate is invalid for any reason, such provision shall be stricken and all remaining provisions will remain in full force and effect. The arbitrator(s) must follow the rule of Law, and the award of the arbitrator(s) will be final and binding on the parties, and judgment upon such award may be entered in any court having jurisdiction thereof. Any such arbitration must be conducted in Scottsdale, Arizona and Provider agrees to such jurisdiction, unless otherwise agreed to by the parties in writing.

36. All prior Provider Manuals in effect since the Nation’s pharmacies signed Provider Agreements also contained a provision labeled “Arbitration.”

37. On April 21, 2021, the Nation sued Petitioners and other defendants in the United States District Court for the Eastern District of Oklahoma, styled *The Choctaw Nation v. CVS Caremark, LLC, et al.*, Case No. 6:21-cv-00128-PRW (the “Complaint”), alleging that the defendants have failed to pay the Nation’s claims for prescription drugs submitted by their pharmacies in violation of 25 U.S.C. § 1621e (the “Recovery Act”). A copy of the Complaint is annexed as Exhibit 1 to this Petition.

1 38. Under the Arbitration Provision, the Nation is required to submit its dispute
2 to an arbitrator in the first instance to resolve all questions related to arbitrability.

3 39. Specifically, as noted above, the Arbitration Provision contains a
4 delegation clause that provides: “The arbitrator(s) shall have exclusive authority to
5 resolve any dispute relating to the interpretation, applicability, enforceability or
6 formation of the agreement to arbitrate, including but not limited to, any claim that all or
7 part of the agreement to arbitrate is void or voidable for any reason.”

8
9 40. Thus, any challenge the Nation brings to whether the Arbitration Provision
10 governs its dispute with Petitioners as alleged in the Complaint must be resolved by the
11 arbitrator and not a court.

12
13 41. In any event, the Nation’s dispute in the Complaint under the Recovery Act
14 is arbitrable because it is within the scope of the Arbitration Provision, as that provision
15 applies to all disputes, “in connection with, arising out of, or relating in any way to, the
16 Provider Agreement or to Provider’s participation in one or more Caremark networks.”

17
18 42. Notwithstanding the clear terms of the Provider Agreement, the Nation
19 brought its claims against Petitioners in federal district court.

20
21 43. By letters dated July 8, 2021, Petitioners demanded that the Nation and all
22 Respondents must arbitrate the dispute raised in the Complaint in Scottsdale, Arizona,
23 pursuant to the terms of the Provider Agreement and Arbitration Provision. Copies of
24 these letters are annexed as Exhibit 2.

25
26 44. The Nation, however, refused to honor Petitioners’ election of arbitration.
27 On July 14, 2021, the Nation notified counsel for Petitioners by letter that it would not
28

1 consent to arbitration of its dispute with Petitioners. A copy of this letter is annexed as
2 Exhibit 3.

3 45. Petitioners are therefore filing this action, through the instant Petition,
4 supporting Declaration of Stephanie Harris with accompanying exhibits, and the
5 supporting Memorandum of Law, to enforce the Arbitration Provision in the Provider
6 Agreement, and specifically the delegation clause therein, and to prevent Respondents
7 from taking any action contrary to the Arbitration Provision.
8

9 46. Petitioners are also separately seeking a stay of all proceedings involving
10 the Complaint in the District Court for the Eastern District of Oklahoma, by application
11 before that court.
12

13 **CLAIM FOR RELIEF**

14 **COUNT I: ARBITRATION PURSUANT TO** 15 **THE FEDERAL ARBITRATION ACT**

16 47. Petitioners incorporate by reference Paragraphs 1 through 46, above.

17 48. The FAA applies to the Provider Agreement as a matter of law and as
18 expressly provided in the Provider Agreement.
19

20 49. Section 4 of the FAA, 9 U.S.C. § 4, provides Petitioners a cause of action
21 to compel Respondents to resolve the dispute with Petitioners through arbitration. Section
22 4 of the FAA, 9 U.S.C. § 4, provides in relevant part:
23

24 A party aggrieved by the alleged failure, neglect, or refusal
25 of another to arbitrate under a written agreement for
26 arbitration may petition any United States district court
27 which, save for such agreement, would have jurisdiction
28 under Title 28, in a civil action or in admiralty of the subject
matter of a suit arising out of the controversy between the

1 parties, for an order directing that such arbitration proceed in
2 the manner provided for in such agreement.

3 50. Petitioners are parties aggrieved by Respondents' refusal to arbitrate under
4 a written agreement for arbitration and, save for the arbitration agreement, the Court has
5 jurisdiction under Title 28 of the U.S. Code, Section 1331.

6 51. The Arbitration Provision in the Provider Agreement constitutes a written
7 agreement that is valid and enforceable under the FAA. Section 2 of the FAA, 9 U.S.C.
8 § 2, provides in relevant part:
9

10 A ... contract evidencing a transaction involving commerce
11 to settle by arbitration a controversy thereafter arising out of
12 such contract or transaction, or the refusal to perform the
13 whole or any part thereof, or an agreement in writing to
14 submit to arbitration an existing controversy arising out of
15 such a contract, transaction, or refusal, shall be valid,
16 irrevocable, and enforceable, save upon such grounds as exist
17 at law or in equity for the revocation of any contract.

18 52. The Arbitration Provision is a written provision in a contract evidencing a
19 transaction involving commerce to settle by arbitration a controversy thereafter arising
20 under the Provider Agreement.

21 53. The Arbitration Provision is valid, irrevocable, and enforceable.

22 54. The Arbitration Provision contains a valid and enforceable delegation
23 clause that provides: "The arbitrator(s) shall have exclusive authority to resolve any
24 dispute relating to the interpretation, applicability, enforceability or formation of the
25 agreement to arbitrate, including but not limited to, any claim that all or part of the
26 agreement to arbitrate is void or voidable for any reason."

27 55. Pursuant to the delegation clause, the arbitrator and not a court must
28 determine in the first instance whether Respondents' dispute is subject to the Arbitration

1 Provision.

2 56. Likewise, pursuant to the delegation clause, the arbitrator and not a court
3 must resolve any defenses to arbitration asserted by the Nation, including but not limited
4 to defenses based on sovereign immunity and any argument that the Recovery Act
5 displaces an arbitration agreement.
6

7 57. Nevertheless, Respondents have disregarded their contractual obligation to
8 submit the arbitrability of the claims asserted in the Complaint to an arbitrator in the first
9 instance.
10

11 58. The Arbitration Provision also applies to all claims asserted by the Nation
12 in the Complaint.

13 59. Thus, the Arbitration Provision contractually requires Respondents to
14 submit all disputes, “including but not limited to, disputes in connection with, arising out
15 of, or relating in any way to, the Provider Agreement or to Provider’s participation in one
16 or more Caremark networks” to be “exclusively settled by arbitration” in Scottsdale,
17 Arizona under American Arbitration Association rules.
18

19 60. The claims set out in the Complaint are “in connection with, arising out of,
20 or relat[e] . . . to, the Provider Agreement or to Provider’s participation in one or more
21 Caremark networks” and therefore fall within the scope of the Arbitration Provision.
22

23 61. Nevertheless, Respondents have disregarded their contractual obligation to
24 submit the arbitrability of the claims asserted in the Complaint to an arbitrator.
25

26 62. The Court should enter an Order compelling Respondents to submit the
27 question of arbitrability of all claims raised in the Complaint, including any defenses to
28

1 arbitration asserted by Respondents, to the arbitrator in the first instance.

2 63. All Petitioners are entitled to enforce the Arbitration Provision, including
3 the delegation clause contained therein, under its terms, as well as under applicable law,
4 even if they may not be signatories to any specific agreement. Furthermore, because the
5 Nation must rely on the terms of the Provider Agreement in asserting its claims against
6 all Petitioners in the Complaint, and because the Nation alleges in the Complaint
7 interdependent and concerted misconduct among all Petitioners, principles of equity and
8 law require that the Nation's claims against all Petitioners be arbitrated.
9

10 64. Respondents cannot avoid arbitration by invoking sovereign immunity
11 because such a defense is inapplicable under the circumstances present here, and any
12 such defense must be resolved in the first instance by the arbitrator pursuant to the
13 delegation clause. In any event, Respondents waived any such immunity with respect to
14 the dispute in the Complaint when it entered into the Provider Agreement and accepted
15 and became bound by the Arbitration Provision in the Provider Manual.
16

17 WHEREFORE, Petitioners request that the Court order the following relief:
18

19 1. An Order, pursuant to Section 4 of the FAA, 9 U.S.C. § 4, compelling
20 Respondents to submit the dispute with the Petitioners relating to the claims in the
21 Complaint to the arbitrator to resolve all questions of arbitrability in the first instance;
22 and
23

24 2. any further relief the Court deems necessary.
25

26 ///

27 ///

1 Dated this 10th day of September, 2021

2
3 Respectfully submitted,

4 **GREENBURG TRAUIG, LLP**

5 /s/ Jon T. Neumann

6 Jon T. Neumann
2375 E. Camelback Road, Suite 700
7 Phoenix, Arizona 85016
(602) 445-8411
8 neumannj@gtlaw.com

9 THOMPSON HINE LLP

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11 (*pro hac vice* application forthcoming)
20 North Clark Street, Suite 3200
12 Chicago, Illinois 60602-5093
(312) 998-4241
13 Peter.Kocoras@ThompsonHine.com

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15 (*pro hac vice* application forthcoming)
335 Madison Avenue, 12th Floor
16 New York, New York 10017-4611
(212) 908-3916
17 Brian.Steinwascher@ThompsonHine.com

18
19 *Attorneys for Petitioners*
20 *Caremark PHC, LLC, CaremarkPCS*
21 *Health, LLC, Caremark, LLC,*
22 *Caremark Rx, LLC, Aetna, Inc., and*
23 *Aetna Health, Inc.*
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27
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2375 EAST CAMELBACK ROAD, SUITE 700
PHOENIX, ARIZONA 85016
(602) 445-8000